

**DEPARTMENT OF STATE REVENUE**  
**LETTER OF FINDINGS: 07-0061**  
**Sales and Use Tax**  
**For the Year 2006**

NOTICE: Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUES**

**I.     Sales Tax – Rental Exemption.**

**Authority:**   IC § 6-2.5-5-8; IC § 6-8.1-5-1.

Taxpayer protests the denial of eligibility for the rental exemption.

**II.    Tax Administration—Negligence Penalty.**

**Authority:**   IC § 6-8.1-10-2.1; 45 IAC 15-11-2.

Taxpayer protests the imposition of a ten percent negligence penalty.

**STATEMENT OF FACTS**

Taxpayer purchased an aircraft on August 8, 2006, and did not pay sales tax on the purchase, claiming the exemption for rental or leasing. After a review of the application for exemption, the Indiana Department of Revenue ("Department") determined that Taxpayer did not qualify for the exemption and issued assessments for sales tax on the purchase of the aircraft, as well as a ten percent negligence penalty. Taxpayer protests this determination and the assessments. Further facts will be supplied as required.

**I.     Sales Tax – Rental Exemption.**

**DISCUSSION**

Taxpayer protests the Department's determination that Taxpayer did not qualify for the rental and leasing exemption on the purchase of the aircraft, as well as the assessments for sales tax and penalty. The Department notes that the burden of proving a proposed assessment wrong rests with the person against whom the proposed assessment is made, as provided by IC § 6-8.1-5-1(c).

The rental and leasing exemption is found at IC § 6-2.5-5-8 (amended July 1, 2007), which states:

(a) As used in this section, "new motor vehicle" has the meaning set forth in IC 9-13-2-111.

(b) Transactions involving tangible personal property other than a new motor vehicle are exempt from the state gross retail tax if the person acquiring the property acquires it for resale, rental, or leasing in the ordinary course of the person's business without changing the form of the property.

(c) The following transactions involving a new motor vehicle are exempt from the state gross retail tax:

(1) A transaction in which a person that has a franchise in effect at the time of the transaction for the vehicle trade name, trade or service mark, or related characteristics acquires a new motor vehicle for resale, rental, or leasing in the ordinary course of the person's business.

(2) A transaction in which a person that is a franchisee appointed by a manufacturer or converter manufacturer licensed under IC 9-23 acquires a new motor vehicle that has at least one (1) trade name, service mark, or related characteristic as a result of modification or further manufacture by the manufacturer or converter manufacturer for resale, rental, or leasing in the ordinary course of the person's business.

(3) A transaction in which a person acquires a new motor vehicle for rental or leasing in the ordinary course of the person's business.

(d) The rental or leasing of accommodations to a promoter by a political subdivision (including a capital improvement board) or the state fair commission is not exempt from the state gross retail tax, if the rental or leasing of the property by the promoter is exempt under IC 6-2.5-4-4.

(e) This subsection applies only after June 30, 2008. A transaction in which a person acquires an aircraft for rental or leasing in the ordinary course of the person's business is not exempt from the state gross retail tax unless the person establishes, under guidelines adopted by the department in the manner provided in IC 4-22-2-37.1 for the adoption of emergency rules, that the annual amount of the lease revenue derived from leasing the aircraft is equal to or greater than:

(1) ten percent (10[percent]) of the greater of the original cost or the book value of the aircraft, if the original cost of the aircraft was less than one million dollars (\$1,000,000); or

(2) seven and five-tenths percent (7.5[percent]) of the greater of the original cost or the book value of the aircraft, if the original cost of the aircraft was at least one million dollars (\$1,000,000).

Of particular relevance is IC § 6-2.5-5-8(e). As this subsection plainly states, it will only apply after June 30, 2008. However, while not controlling for an aircraft purchased in 2006, it is a useful guide in the instant case. Here, the aircraft in question was purchased for over four-hundred and forty-five thousand dollars (\$445,000). As provided by IC § 6-2.5-5-8(e)(2), after June 30, 2008, the annual amount of lease revenue derived from the leasing of the aircraft would need to be equal or greater than ten percent of the greater of the original cost or the book value of the aircraft in order for Taxpayer to qualify for the exemption.

A review of the Department's sales tax records shows that Taxpayer has been remitting sales tax on revenue it collected starting in 2006. Considering the amount of revenue collected and sales tax remitted for the first eight months of 2007, and projecting similar results for the remainder of 2007, Taxpayer meets the ten percent lease-revenue requirement which will take effect after June 30, 2008, as described by IC § 6-2.5-5-8(e)(2).

In addition to the information regarding the revenue stream, Taxpayer has provided other documentation supporting its position that it leased the aircraft in the ordinary course of its business, as required by IC § 6-2.5-5-8(b). This documentation includes four lease agreements (including related entities) that state arms-length terms, detailed flight logs, invoices documenting the collection of sales tax, etc. Again, while the ten percent standard described by IC § 6-2.5-5-8(e)(2) will not take effect until after June 30, 2008, it is a useful guideline which Taxpayer satisfies. When taken into account with the other documentation Taxpayer has provided, Taxpayer has met the burden imposed by IC § 6-8.1-5-1(c).

### **FINDING**

Taxpayer's protest is sustained.

## **II. Tax Administration—Negligence Penalty**

### **DISCUSSION**

The Department issued proposed assessments and the ten percent negligence penalty for the tax year in question. Taxpayer protests the imposition of penalty. The Department refers to IC § 6-8.1-10-2.1(a), which states in relevant part:

If a person:

...

(3) incurs, upon examination by the department, a deficiency that is due to negligence;

...

the person is subject to a penalty.

The Department refers to 45 IAC 15-11-2(b), which states:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

45 IAC 15-11-2(c) provides in pertinent part:

The department shall waive the negligence penalty imposed under IC 6-8.1-10-1 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section.

In this case, taxpayer did not incur a deficiency due to negligence under 45 IAC 15-11-2(b), and so was not subject to a penalty under IC § 6-8.1-10-2.1(a). Taxpayer has affirmatively established that there was no failure to pay a deficiency, as required by 45 IAC 15-11-2(c).

### **FINDING**

Taxpayer's protest is sustained.

LS/WL/DK – November 15, 2007